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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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10 JULIO C. OLARTE, individually,
11 Plaintiff,
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Case No: 2:13-cv-0044-LDG-PAL

13 v.

ORDER

14 DHI MORTGAGE; ANY AND ALL
15 UNKNOWN PARTIES CLAIMING BY,
16 THROUGH UNDER AND AGAINST THE
17 HEREIN NAMED INDIVIDUAL
18 DEFENDANT(S) WHO ARE NOT KNOWN
19 TO BE DEAD OR ALIVE, WHETHER SAID
20 UNKNOWN PARTIES MAY CLAIM AN
21 INTEREST AS SPOUSES; HEIRS,
22 DEVISEES, GRANTEES, OR OTHER
23 CLAIMANTS; et al.;

24 Defendants.
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21 Plaintiff Julio Olarte possesses the property located at 6180 Marasco Ct., Las Vegas,
22 Nevada 89149. Olarte purchased the deed from D. R. Horton, Inc., on August 24, 2011. On
23 August 26, 2011, the defendant, DHI Mortgage, was recorded in the Clark County Recording
24 Office as the recipient of a deed of trust on the property in the Clark County Recorder's Office,
25 showing that it had lent Olarte \$360,499. Olarte disputes this and states in his complaint that he
26 "repeatedly demanded of DHI Mortgage to prove that it had lent Julio C. Olarte any sum of

1 money. DHI Mortgage failed to prove that it had lent Julio C. Olarte any sum of money.” *See*
2 Complaint at 3. Shortly after, DHI sold the note and deed of trust on the property to Wells Fargo
3 Home Mortgage, which became effective on November 1, 2011. Olarte filed a complaint on
4 January 9, 2013, in order to “quiet title to the real Property owned by Julio Olarte.” *See* Complaint
5 at 1. DHI responded by filing a motion to dismiss the complaint on January 16, 2013 (motion #4,
6 opposition #10, reply #11), and a request for judicial notice (#5, response #10, reply #12). On
7 August 15, 2013, Olarte filed his motion for leave to add party defendant and to amend complaint
8 in this action (#23, response #24).

9 A. *Request for Judicial Notice*

10 For the reasons cited in DHI’s request and reply in support of judicial notice, the court will
11 grant the request.

12 B. *Motion to Dismiss*

13 Defendant’s motion to dismiss, brought pursuant to Rule 12(b)(6), challenges whether the
14 Plaintiff’s complaint states “a claim upon which relief can be granted.” *See* Fed. R. Civ. P.
15 12(b)(6). In ruling upon this motion, the court is governed by the relaxed requirement of Rule
16 8(a)(2) that the complaint need contain only “a short and plain statement of the claim showing that
17 the pleader is entitled to relief.” As summarized by the Supreme Court, a plaintiff must allege
18 “only enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v.*
19 *Twombly*, 550 U.S. 544, 570 (2007). Nevertheless, while a complaint “does not need detailed
20 factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’
21 requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of
22 action will not do.” *Id.* (citations omitted). “While legal conclusions can provide the framework
23 of a complaint, they must be supported by factual allegations.” *Ashcroft v. Iqbal*, 556 U.S. 662,
24 679 (2009). In deciding whether the factual allegations state a claim, the court accepts those
25 allegations as true, as “Rule 12(b)(6) does not countenance . . . dismissals based on a judge’s
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1 disbelief of a complaint's factual allegations." *Neitzke v. Williams*, 490 U.S. 319, 327 (1989).
 2 Further, the court "construe[s] the pleadings in the light most favorable to the nonmoving party."
 3 *Outdoor Media Grp., Inc., v. City of Beaumont*, 506 F.3d 895, 900 (9th Cir. 2007).

4 The court must determine whether the complaint meets the requirements to bring a quiet
 5 title claim. Nevada Revised Statute 40.010 states that "an action may be brought by any person
 6 against another who claims an estate or interest in real property, adverse to the person bringing the
 7 action, for the purpose of determining such adverse claim." Nev. Rev. Stat. 40.010. "The burden
 8 of proof rests with the plaintiff to prove good title in himself." *Velazquez v. Mortgage Electronic*
 9 *Registration Systems, Inc.*, slip op., 2011 WL 1599595, at *2 (D. Nev. Apr. 27, 2011) (quoting
 10 *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 918 P.2d 314, 318 (Nev. 1996)). The elements
 11 of a quiet title claim are: (1) "the party seeking to have another party's right to property
 12 extinguished, must overcome the 'presumption in favor of the record titleholder,'" *see Nebab v.*
 13 *Bank of Am., N.A.*, No. 2:10-cv-01865-KJD-GWF, 2012 WL 2860660, at *5 (D. Nev. July 11,
 14 2012) (quoting *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 918 P.2d 314, 318 (Nev.
 15 1996)), and (2) "to allege that he has paid any debt owed on the property." *Nebab*, 2012 WL
 16 2860660, at *5 (citing *Ferguson v. Avelo Mortgage, LLC.*, No. B223447, 2011 WL 2139143, at *2
 17 (Cal. App. 2d June 1, 2011)).

18 In *Nehab*, the court dismissed the quiet title claim when the plaintiff failed to pay the debt
 19 owed on the property. *Nebab*, 2012 WL 2860660, at *5 ("[p]laintiff has not alleged that he can
 20 prove good title in himself and he does not dispute his failure to pay the debt owed on the property
 21 . . . accordingly, the Motion to Dismiss this cause of action [is] granted"). In *Rivera v. Recontrust*,
 22 the court dismissed a quiet title claim because the plaintiff "has failed to show that she has
 23 satisfied all encumbrances against the Property. Plaintiff has not plead specific facts showing that
 24 title could be quieted in her name or that she could meet her burden of proving good title in
 25 herself. Accordingly, the claim for quiet title fails." *Rivera v. Recontrust Co., N.A.*, 2:11-cv-
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1 01695-KJD-PAL, 2012 WL 2190710, at *4 (D. Nev. June 14, 2012). Also, a plaintiff's quiet title
2 claim was dismissed when "they ask[ed] the Court to clear title in their name because
3 '[d]efendants have dirty hands and have not behaved in an equitable manner.'" *Robins v. Wolf*
4 *Firm*, No. 2:10-cv-0424-RLH-PAL, 2010 WL 2817202 (D. Nev. July 15, 2010). The court goes
5 on to say that "[e]ven if this is true, it does not entitle the Robins to title to property when they
6 have not met their mortgage obligations." *Id*; see also *Ensley v. LaSalle Bank, NA*, 2008 WL
7 6062193, at *1, 238 P.3d 809 (Nev. 2008) (unpublished) (summary judgment granted when the
8 plaintiff "implicitly recognized the existence of a mortgage loan secured by [the plaintiff's]
9 residence . . . and did not allege that the loan had been fully paid").

10 Here, Olarte must overcome the presumption in favor of the record titleholder. He has not
11 tipped the presumption in his favor. Olarte claims that he "repeatedly demanded of DHI Mortgage
12 to provide that it had lent Julio C. Olarte any sum of money" and that "DHI Mortgage failed to
13 provide that it had lent Julio C. Olarte any sum of money." The fact that DHI has not responded to
14 Olarte's demands does not satisfy the presumption in favor of DHI, who is the record titleholder,
15 because DHI has produced the promissory note and deed of trust.

16 Olarte must establish that he has paid off all debt owed to the property. Just as in *Rivera*,
17 Olarte has failed to show or allege that he has "satisfied all encumbrances against the property," see
18 *Rivera*, 2012 WL 2190710, at *4. DHI has produced the promissory note and the deed of trust
19 with Olarte's signature on each, indicating his obligation to pay the debt. Olarte's only response is
20 to the note, stating that "it is an issue of material fact that requires additional discovery and
21 proceedings." Olarte does not allege or dispute that the signature on the note was forged or
22 produce a different note with different terms thereon than the note produced by DHI. Moreover, in
23 his motion for leave to add party defendant and to amend complaint (#23), Olarte expressly
24 acknowledges that the property remains subject to a mortgage that has not been satisfied in full.
25 Thus, he does not satisfy the second element of a quiet title claim.
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1 Olarate further contends that it “cannot be established by judicial notice of whether or not
2 this is the real, original, and ‘wet-ink’ Note for Plaintiff’s property.” This court has ruled that
3 there is no obligation on the lender to provide the original note. *Potter v. BAC Home Loans*
4 *Servicing, LP.*, No. 2:10-CV-02095-GMN-LRL, 2011 WL 2971204, at *8 (D. Nev. July 19, 2011)
5 (“[I]t is clear under *Roberts* and related Nevada case law that lenders, or other entities . . . that are
6 involved in transacting a mortgage, do not have an affirmative duty to produce the original
7 mortgage note”; citing *Roberts v. McCarthy*, No. 2:11-CV-00090-KJD-LRL, 2011 WL 1363811,
8 at *4 (D. Nev. Apr. 11, 2010)). Even if the note is not the “wet-ink” document, it bears no weight
9 on the legal outcome because that fact fails to address either of the two elements of a quiet title
10 claim. Accordingly, the court will grant defendant’s motion to dismiss.

11 C. *Motion for Leave to Add Party Defendant and to Amend the Complaint*

12 As DHI points out, Olarate’s motion for leave to add party defendant and to amend the
13 complaint violated LR 15-1 in that it fails to attach the proposed amended complaint to the
14 motion. Even after notice of this defect, Olarate has not timely replied nor submitted the proposed
15 amended complaint. On that ground alone, Olarate’s motion should be denied; the court is unable
16 to evaluate the grounds for adding a new party or amending the complaint.

17 In any event, on the record as it stands, Olarate’s motion expressly acknowledges that the
18 property remains subject to a mortgage that has not been satisfied in full. Therefore, the
19 determinations of the court with respect to DHI’s motion to dismiss Olarate’s quiet title action
20 would remain undisturbed even with the addition of an additional party. Therefore,

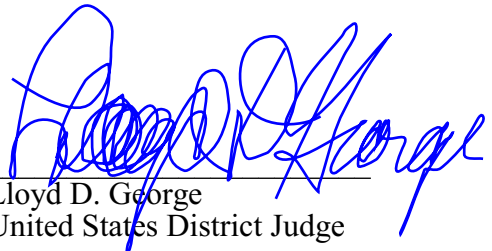
21 THE COURT HEREBY ORDERS that defendant DHI’s request for judicial notice (#5) is
22 GRANTED.

23 THE COURT FURTHER ORDERS that defendant DHI’s motion to dismiss the complaint
24 (#4) is GRANTED.

1 THE COURT FURTHER ORDERS that plaintiff's motion for leave to add party
2 defendant and to amend complaint (#23) is DENIED.

3 THE COURT FURTHER ORDERS that, as no defendants remain in the action, this case is
4 hereby DISMISSED.

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6 Dated this 27 day of September, 2013.

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Lloyd D. George
United States District Judge